

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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Before: Martin L. Grossman, Hearing Examiner

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND	4
A. The Subject Property and the Neighborhood.....	4
B. Proposed Use	7
C. Neighborhood Response	13
D. The Master Plan	13
III. SUMMARY OF HEARING	13
IV. FINDINGS AND CONCLUSIONS	15
A. Standard for Evaluation	15
B. General Conditions	17
C. Specific Standards.....	22
D. Additional Applicable Standards	27
V. RECOMMENDATION	27

I. STATEMENT OF THE CASE

Petition No. S-2813, filed on May 27, 2011, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the cellar¹ of an existing single-family home located at 7921 Sligo Creek Parkway, in Takoma Park, Maryland, on land in the R-60 Zone. The property's legal description is Lot 44, Block 53 of the Flower Avenue Park Subdivision of Takoma Park. The tax account number is 13-03145558.

An accessory apartment at the same location was approved by the Board on July 11, 1991 in S-1862, but it was revoked by the Board on April 27, 2005, based on a memorandum from the Department of Housing and Community Affairs informing the Board that the current Petitioners, who had just acquired the home, had reported that the accessory apartment was abandoned. Exhibit 13, Attachment 1. Petitioners have now decided that they do wish to operate an accessory apartment in their home, and hence have filed the instant petition.

The Hearing was initially scheduled for October 20, 2011, but the Hearing Examiner was informed shortly before that date that one of the Petitioners had been hospitalized, while out of the country, and would not be able to attend. The hearing was convened on October 20, 2011, to recite these facts and to announce that a new hearing date would be noticed. The new hearing was set for March 15, 2012, by notice dated January 10, 2012 (Exhibit 17).

Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued September 15, 2011, recommended approval of the special exception, with conditions. Exhibit 13.²

The Department of Housing and Community Affairs (DHCA) inspected the property on September 29, 2011. Housing Code Inspector Ivan Eloisa reported his findings in a memorandum

¹ Technical Staff referred to the location as the basement of the home (Exhibit 13, p. 4), but the Housing Code Inspector referred to it as the cellar. Exhibit 14.

² The Technical Staff report is frequently quoted and paraphrased herein.

dated October 5, 2011 (Exhibit 14). The inspector's preliminary report specified that the accessory apartment has 511 square feet of habitable space, permitting an occupancy of up to two people. The inspector also noted that the ceiling height in the bedroom ranges from 6'09"-6'10", which is below the minimum of 7 feet required by Code Section 26-5(d). However, because the Board had previously approved this unit as an accessory apartment, DHCA agreed to waive this defect, pursuant to its authority under Code Section 26-17, if Petitioners requested the waiver in writing and also agreed to install hardwired, interconnected smoke detectors throughout the house. Exhibit 18.

A public hearing was convened on March 15, 2012, as scheduled, and Petitioners Susan Ogden and Hank Prensky appeared *pro se*. Also testifying was Inspector Ivan Eloisa of the Department of Housing and Community Affairs. Petitioners executed an affidavit of posting (Exhibit 19) and submitted a copy of their deed (Exhibit 20). They adopted the findings in the Technical Staff Report (Exhibit 13) and in the Housing Code Inspector's Report (Exhibit 14), as Petitioners' own evidence. Tr. 5. They also agreed to meet all the conditions set forth in both reports. Tr. 5-6.

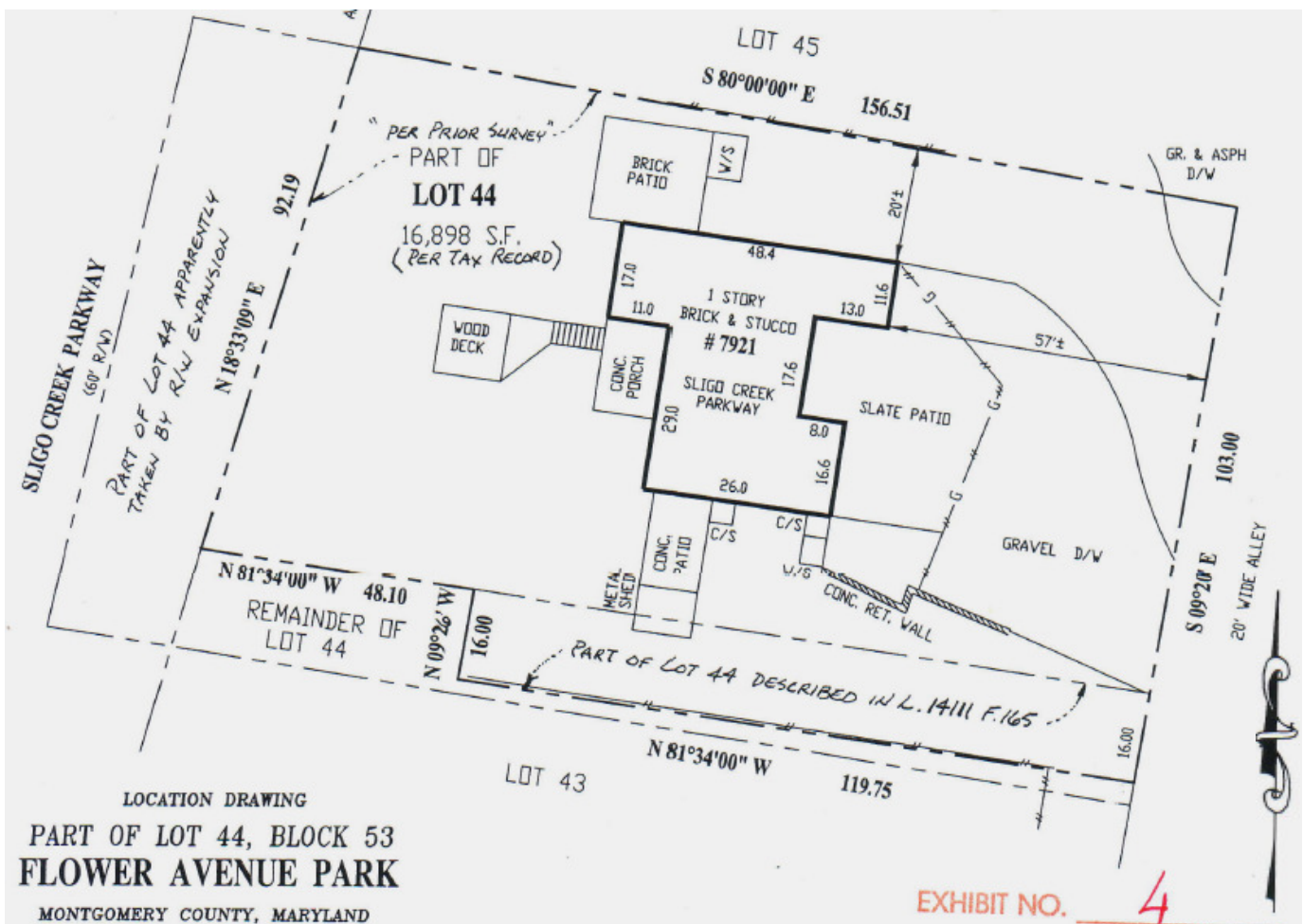
The record was held open till March 30, 2012, to await the filing of the transcript and the formal grant of a waiver of the bedroom ceiling-height regulation by DHCA, as referenced above. On March 28, 2012, while the record was open, Mr. Eloisa submitted an e-mail (Exhibit 21) attaching DHCA's formal decision to grant a waiver of the ceiling height requirement. Exhibit 21(a). Unfortunately, the formal waver incorrectly cited the Board of Appeals case number. It was corrected and resubmitted on April 4, 2012. Exhibits 22 and 22(a). The Hearing Examiner hereby reopens and closes the record, effective April 4, 2012, to receive the corrected DHCA waiver.

There have been five letters of support (Exhibit 10), and there is no opposition to this special exception petition. The petition meets all of the statutory criteria, and the Hearing Examiner therefore recommends that the petition be granted, with conditions specified in Part V of this report.

II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is located at 7921 Sligo Creek Parkway, Takoma Park, Maryland, in the of the Flower Avenue Park Subdivision. It is west of Maple Avenue and about 500 feet south of the intersection of Kennebec Avenue and Sligo Creek Parkway. The home is in the R-60 Zone, on a 16,898 square-foot lot, as is depicted in the site plan (Exhibit 4).



Technical Staff described the property as follows (Exhibit 13, pp. 2-3):

The subject property contains approximately 16,898 square feet of land and is rectangular in shape. It is classified under the R-60 Zone in the 2000 Takoma Park Master Plan. The existing dwelling unit was constructed in 1952 and contains approximately 1,609 square feet. The house is located on a heavily treed lot with much vegetation and landscaping in the Flower Avenue Park

subdivision in the City of Takoma Park. Although the property fronts on Sligo Creek Parkway, the steep topography along the roadway makes access to the site prohibitive. Thus, the subject property and the surrounding and adjacent properties receive access from the rear via Edinburgh Lane, a 20 - 25 foot wide residential alley maintained by the City of Takoma Park. The dwelling unit is sited on a flat portion of the lot along Edinburgh Lane, the lot then slopes down steeply to Sligo Creek Parkway. All of the steep slope area is covered with trees and thick vegetation, thereby obscuring the dwelling unit's visibility from Sligo Creek Parkway. . . . Entrance to the main dwelling unit is from the gravel parking area adjacent to Edinburgh Lane. There is no street parking along Edinburgh Lane.³

The home can be seen in the following photographs from the Technical Staff report (Exhibit 13, pp. 3 and 4) and from Petitioners' submission (Exhibit 9(c)) :



Views of the Home from Edinburgh Lane



View of the Home from Sligo Creek Parkway



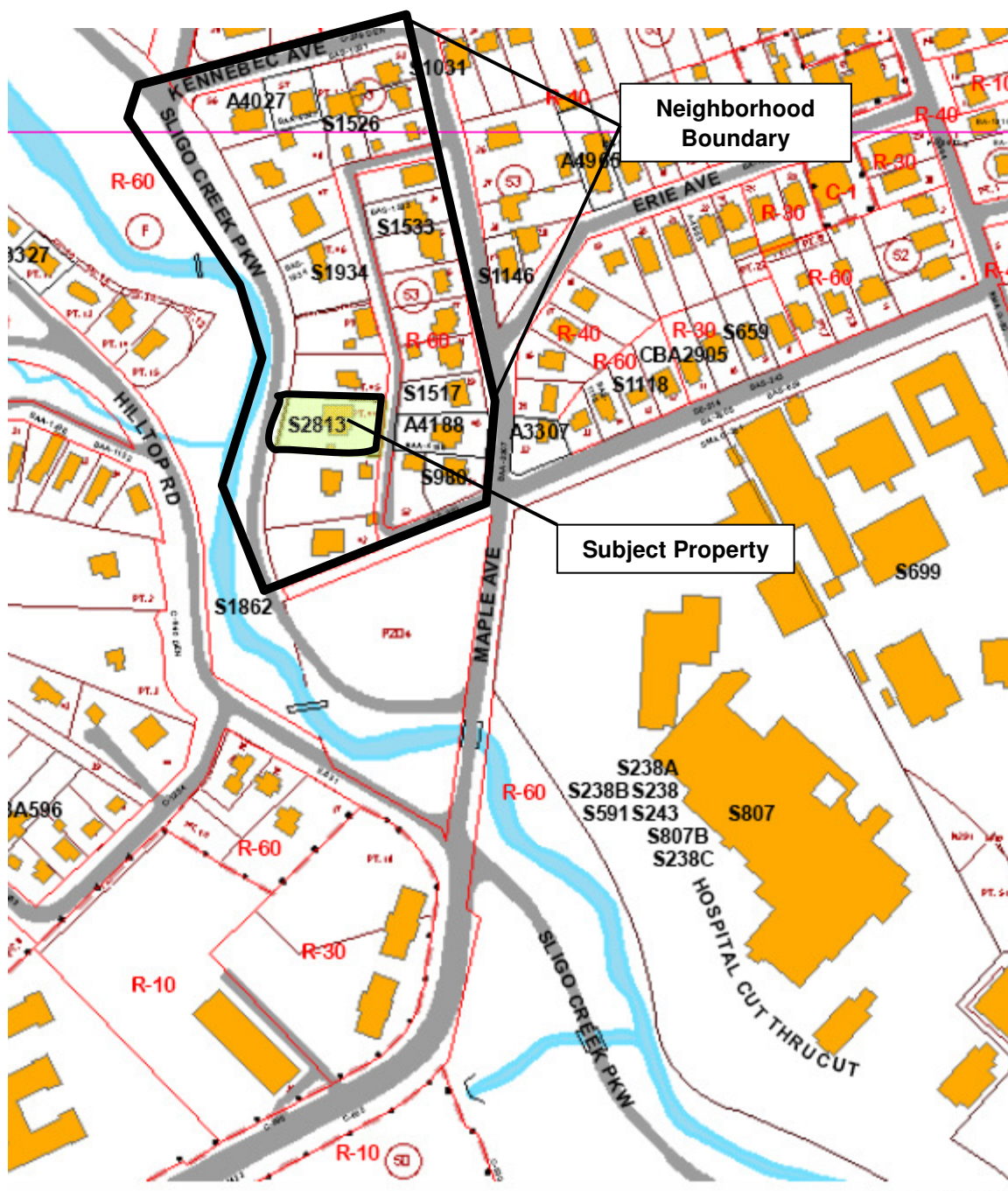
Front entrance of main house



Main house & parking; apartment parking and path to right

³ Staff notes that because of its unique location between two parallel roadways, the subject site is deemed a "through lot"; thus, the site has two front yards and no rear yard. A "through lot" is defined in Section 59-A-2.1 of the Zoning Ordinance as "An interior lot, fronting on 2 parallel or approximately parallel streets."

Technical Staff defined the general neighborhood as bounded by one-family detached homes along the north side of Kennebec Avenue to the north; one-family detached homes along the west side of Maple Avenue to the east; the intersection of Maple Avenue and Maplewood Avenue to the south; and Sligo Creek Parkway to the west. Exhibit 13, pp. 4-5. The Hearing Examiner accepts this neighborhood definition, and it is shown below on a map supplied by Technical Staff (Exhibit 13, p. 6):



According to Technical Staff, the neighborhood consists of 24 one-family homes which are zoned R-60. The neighborhood boundary is drawn to include properties that may be affected by a potential increase in density or traffic. There are four other approved special exceptions within the neighborhood boundaries: S-1031, an accessory apartment approved on 11/16/84; S-980, an accessory apartment approved on 12/19/84; S-1533, an accessory apartment approved on 3/9/89; and S-1934, an accessory apartment approved on 5/2/92. Exhibit 13, p. 5.

B. The Proposed Use

The Petitioners are seeking a special exception to allow a 627 square-foot accessory apartment in the basement of their existing home. A separate entrance to the apartment is located at the northwest corner of the house and is distinct from the entrance to the main dwelling, as depicted in the following photograph from the Staff report (Exhibit 13, p. 7):

**Entrance to Proposed
Accessory Apartment**



Technical Staff reports that the proposed use has the appearance of a typical rear entry into a one-family home, and that the accessory apartment entrance will not detract from the appearance of

the neighborhood. “Adequate lighting, residential in character, is located adjacent to the apartment’s entrance door.” Exhibit 13, p. 7. A concrete path with steps leads from the gravel parking area to a brick patio and steps that go down to the apartment’s entrance. The path and parking area are shown below on photographs provided by Petitioners (Exhibit 9(d)):

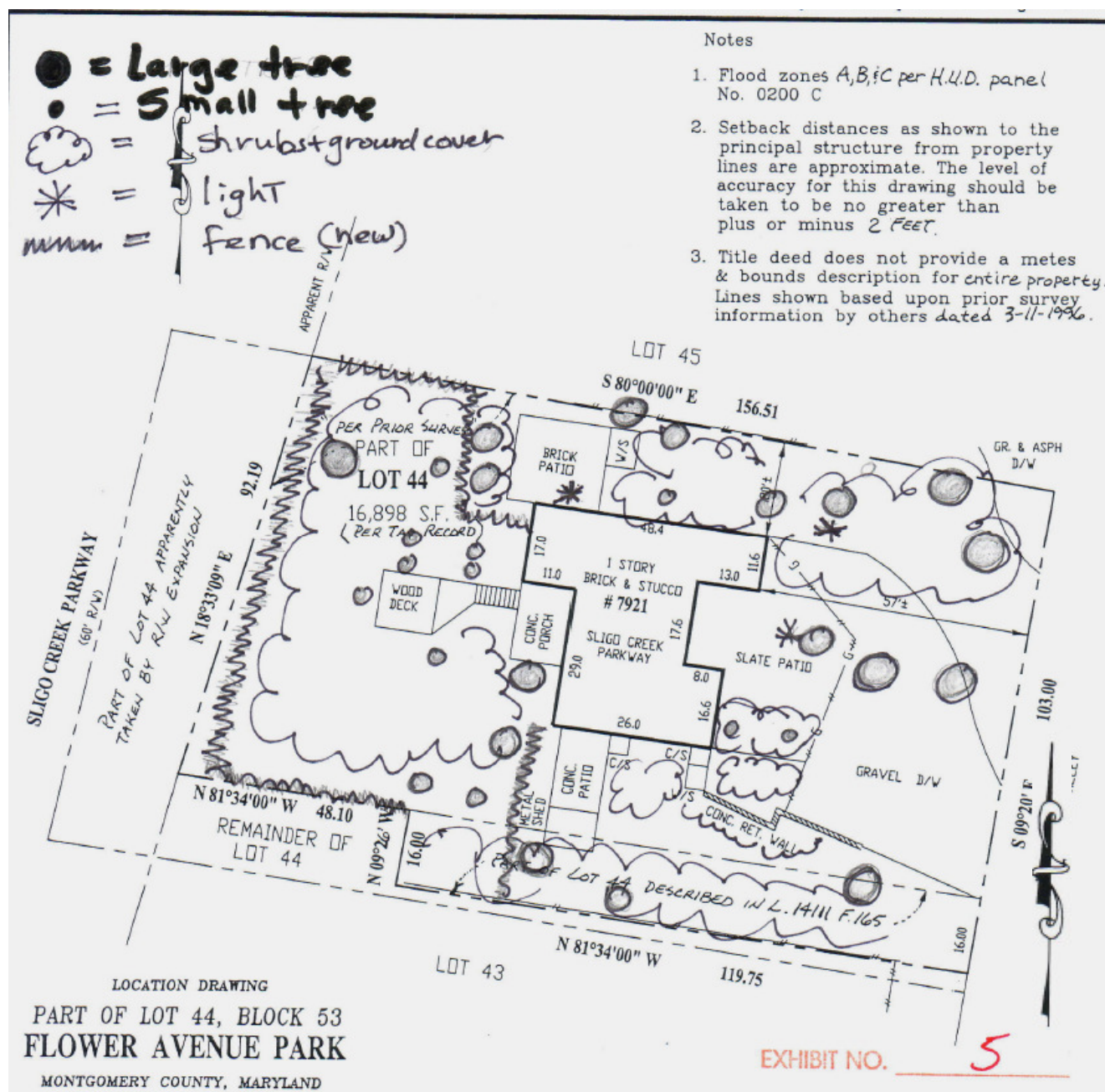


Path to apartment



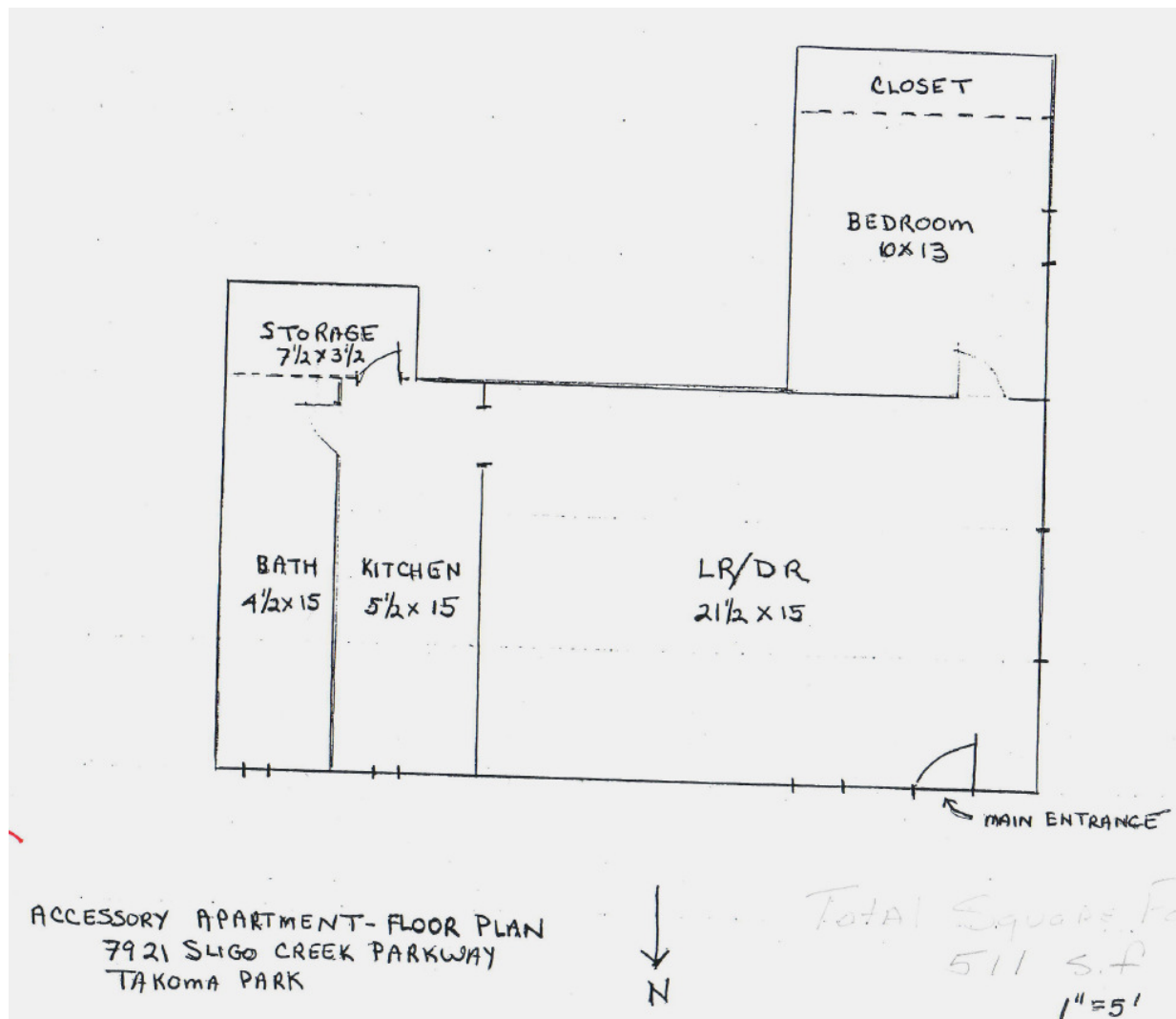
Apartment parking and path to apartment: outd

Technical Staff reports that “the site contains many large trees, well developed landscaping and thick vegetation along its lot lines, adjacent to Sligo Creek Parkway, the dwelling unit and gravel parking area.” Exhibit 13, pp. 8-9. No new plantings, lighting or other external changes are proposed under the application. Tr. 8-9. Petitioners have provided a Landscape and Lighting Plan (Exhibit 5) with the application. The plan, which is reproduced on the next page, shows the location of existing landscaping, vegetation and lighting on the site.



According to Technical Staff, there are no landscaping or environmental issues associated with this application. Exhibit 13, p. 9.

The overall net floor area of the apartment is approximately 627 square feet, 511 square feet of which is habitable, and it includes a living room/dining room, a bedroom, a kitchen and a bathroom, as shown on the Floor Plan (Exhibit 6), reproduced on the next page.



The Department of Housing and Community Affairs (DHCA) inspected the property on September 29, 2011, and Housing Code Inspector Ivan Eloisa reported his findings in a memorandum dated October 5, 2011 (Exhibit 14). The substance of his report is set forth below:

The preliminary inspection was conducted on September 29, 2011. The Accessory Apartment (AA) is located in the cellar of the house. The issues regarding Accessory Apartment standards are as follows:

1. The applicants purchased the dwelling in May, 2003. At the time, an AA (S-1862) existed in the basement of the dwelling unit. It had been approved in 1991. The applicants sought to revoke the special exception use in 2004 and the Board of Appeals approved the revocation request in April, 2005.
2. The existing dwelling is located on a lot consisting of 16,898 square feet of land.

3. The AA consists of 511 square feet of habitable space including one sleeping room measuring 108 square feet.
4. Based on square footage requirements, the AA may be occupied by up to two people.
5. The existing dwelling was constructed in 1952 and contains approximately 1,609 square feet.
6. The existing dwelling has off street parking consisting of a large area in front of the house which would allow for the parking of more than 5 vehicles on the premise.
7. The ceiling height in the bedroom ranges from 6'09"-6'10". All other areas are over the required 7' ceiling height.
8. The AA entrance door from the exterior currently has a double cylinder deadbolt lock that must be replaced with a single cylinder lock that operates with a thumb turn from inside and a key from outside the premises.
9. The door separating the AA from the main house dwelling must have a lock to divide the units.
10. The bathroom door must be repaired or replaced to close and latch as designed.
11. The bedroom door must be repaired or replaced to close and latch as designed.
12. The bathroom toilet seat needs to be replaced.

As noted in item number 7, above, the Inspector found that the ceiling height in the bedroom ranges from 6'09"-6'10", which is below the minimum of 7 feet required by Code Section 26-5(d). However, because the Board had previously approved this unit as an accessory apartment, DHCA agreed to waive this defect, pursuant to its authority under Code Section 26-17, if Petitioners requested the waiver in writing and also agreed to install hardwired, interconnected smoke detectors throughout the house. Exhibit 18.

Petitioners made the formal request for a waiver after the hearing, and DHCA approved a waiver pursuant to Code Section 26-17(a)(2)(B),⁴ on condition that Petitioners install hardwired, interconnected smoke detectors throughout the entire house. DHCA noted that a permit must first be obtained from the Department of Permitting Services to install the smoke detector system and that the work must be performed by a Maryland licensed, certified electrician. Exhibit 22(a).

Mr. Eloisa testified that, based on his inspection, once the waiver is granted, there is no

⁴ Code Section 26-17(a)(2)(B) permits DHCA to grant a waiver if no violation presents an immediate danger to the health, safety, or welfare of an occupant of a dwelling or the public, and physical conditions of the site or other conditions beyond the owner's control make it impossible to bring the dwelling into compliance with the Code.

objection to the special exception being approved. Tr. 19-20.

Technical Staff discussed transportation issues at page 8 of their report (Exhibit 13), stating:

The proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance. The existing one-family dwelling is estimated to generate one peak-hour trip during the weekday morning and evening peak-periods. The proposed accessory apartment is estimated to generate one additional peak hour trips during the weekday peak periods. Since the number of peak hour trips, when combined, will generate fewer trips than the threshold figure requiring a traffic study (30 peak-hour trips), the proposed accessory apartment passes the Local Area Transportation Review (LATR) and is not subject to the Policy Area Mobility Review (PAMR) requirements of the APF test.

Technical Staff noted that vehicular access to the existing house and accessory apartment will be from Edinburgh Lane. Parking for the main dwelling and the accessory apartment can be accommodated in the gravel parking area, which according to Staff, can provide at least four parking spaces. Staff also found that “The special exception will not have an adverse effect on vehicular and pedestrian access or pedestrian safety.” Exhibit 13, p. 8.

Ms. Ogden testified that in the front of her house is a large gravel parking lot, which can accommodate up to six cars, three in the front and three in the back. One of those spaces would be designated for the tenant, and they can also accommodate a second tenant’s car if need be. Tr. 10-11. The availability of sufficient off-street parking was confirmed by the Housing Code Inspector, who estimated that the gravel parking lot can accommodate at least five cars. Tr. 20.

Given this evidence, the Hearing Examiner finds that the proposed accessory apartment will not unduly burden local transportation facilities and that there is adequate parking to accommodate both the owners and the accessory apartment tenant.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause non-inherent adverse effects on the neighborhood warranting denial of the petition.

C. Neighborhood Response

There have been five letters of support for the petition from the community (Exhibit 10), including from the next-door neighbors. There is no opposition in the case.

D. The Master Plan

The property is located within the area covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. The Plan does not explicitly address the question of accessory apartments, but it does emphasize revitalizing housing and accepting a diversity of housing types in the community. Master Plan, pp. 28-29. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. Plan Appendix B, at p. B-8 (Area D, Map 43).

Technical Staff reports that the subject property was not recommended for any changes by the Master Plan, which reconfirmed the R-60 zoning for the subject site. Staff found, “The proposed use reinforces the plan’s recommendation of retaining the single family detached character in Takoma Park.” Exhibit 13, pp. 7-8. Hence, Staff concluded that the subject application is consistent with the Master Plan’s recommendations.

The Hearing Examiner agrees. Because Petitioner plans no external structural modifications to the subject property and because there is sufficient parking to accommodate the proposed use, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the *Takoma Park Master Plan*.

III. SUMMARY OF HEARING

At the hearing, testimony was heard from Petitioners Susan Ogden and Hank Prensky, and from Housing Code Inspector Ivan Eloisa. There was no opposition.

Petitioners Susan Ogden and Hank Prensky (Tr. 5-18; 21-27):

Petitioners executed an affidavit of posting (Exhibit 19), and submitted a copy of their deed

(Exhibit 20). They adopted the findings in the Technical Staff Report (Exhibit 13) and in the Housing Code Inspector's Report (Exhibit 14), as Petitioners' own evidence. Tr. 5. They also agreed to meet all the conditions set forth in both reports and in the ceiling-height waiver discussed in this report. Tr. 5-7.

Ms. Ogden testified that her legal name is now Susan Ogden. It had been "Susan Saidman," as reflected in the Deed (Exhibit 20). Tr. 7-8, 14.

Petitioners testified that there would be no new plantings, lighting or other external changes to the subject site, and that the external lighting is residential in nature. Tr. 8-9.

Ms. Ogden stated that in the front of the house is a large gravel parking lot, which can accommodate up to six cars, three in the front and three in the back. One of those spaces would be designated for the tenant, and they can also accommodate a second tenant's car if need be. Tr. 10-11.

Petitioners testified that they acquired the property in May of 2003, as reflected in their deed. Tr. 14. They identified their plans and photographs in the file. Tr. 14-18.

Housing Code Inspector Ivan Eloisa (Tr. 19-22):

Housing Code Inspector, Ivan Eloisa, testified that he inspected the premises on September 29, 2011, and that his findings are set forth in his report of October 5, 2011 (Exhibit 14). Tr. 19-20.

He stated that this is a basement dwelling unit that is in good condition, habitable, except for the issue of the bedroom ceiling height, which will be addressed through the waiver. They have 511 square feet of total habitable space, and 108 square feet of bedroom space. Due to the size of the accessory apartment, they can have up to two tenants in the unit. There are a couple of minor repairs to be done, which are noted in the list. Overall, that's all that needs to be done. There are at least five off-street parking spaces that he observed on the gravel. Based on his inspection, once the

waiver is granted, there is no objection for the special exception to be approved. Tr. 19-20.

[Given Mr. Eloisa's estimate of how long it would take to get a formal waiver from DHCA regarding the ceiling height, the Hearing Examiner indicated that the record would be held open until March 30, 2012. Tr. 20-25.]

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 13).

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale

of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 13, pp. 10-11):

- 1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall;
- (2) the provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
- (3) a separate entrance and walkway and sufficient exterior lighting;
- (4) sufficient parking;
- (5) the existence of an another household on the site with resulting additional activity including greater use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) the potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that

would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found (Exhibit 13, p. 11):

Under the subject application, there are no adverse effects that will negatively impact the community above those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling and is not identifiable from the street. The apartment will provide space and facilities necessary for an apartment use.

The accessory unit has its own separate entrance apart. The apartment entrance appears typical of a rear entrance to a one-family house, as such it is difficult to distinguish it from any other neighborhood home. The entrance of the accessory apartment will be illuminated consistent with typical residential standards.

Vehicular parking for the accessory apartment will be located in the gravel parking area via Edinbrough Lane. This area can accommodate at least four vehicles on site including the two required spaces for the main dwelling unit.

Based on these findings, Staff concluded (Exhibit 13, p. 11):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no non-inherent adverse effects present in this case.

The Hearing Examiner agrees with Staff's assessment. Considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there would be no non-inherent adverse effects from the proposed use.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector's report, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part IV. C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. Technical Staff reports that the subject property was not recommended for any changes by the Master Plan, which reconfirmed the R-60 zoning for the subject site. Staff found, "The proposed use reinforces the plan's recommendation of retaining the single family detached character in Takoma Park." Exhibit 13, pp. 7-8. Hence, Staff concluded that the subject application is consistent

with the Master Plan's recommendations. The Hearing Examiner agrees and so finds.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The accessory apartment is located in an existing dwelling and will not require any external changes. It therefore will maintain its residential character. There is sufficient off-street parking on a gravel parking lot to accommodate both the owners and the tenants. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are other accessory apartments in the defined neighborhood, but the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that "Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or

physical activity. The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 13, p. 13. The Hearing Examiner finds that because the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: According to Technical Staff, the four other homes with accessory apartments in the area are not distinguishable from the other residences; nor will this one be. Exhibit 13, pp. 13-14. For the reasons discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 13, p. 14), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
 - (i) *does not require approval of a new preliminary plan of subdivision; and*
 - (ii) *the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact; then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 13, p. 8. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR

are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that "the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic," the Hearing Examiner so finds. Exhibit 13, p. 15.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 13), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate*

accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the cellar of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment is located in an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1952. Exhibit 13, p. 16. It therefore meets the “5 year old” requirement.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use will not violate any of the provisions of this subsection.

- (6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment will preserve the appearance of a one-family dwelling. The apartment entrance will be separate from the main entrance and

substantially screened with landscaping. As noted by Technical Staff, the apartment entrance will have the appearance of a typical rear entry to a one-family home.

Exhibit 13, p. 17. There will thus be no change to the home's residential appearance.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: No external modifications or improvements are proposed by Petitioners. Tr. 8-9.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment, at 627 square feet, 511 square feet of which is habitable, is under the maximum of 1,200 square feet. It will also clearly be subordinate to the main dwelling, which according to Technical Staff, has a total floor area of 1,609 square feet. Exhibit 13, p. 17.

59-G § 2.00(b) Ownership Requirements

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioners will live in the main dwelling unit on the property.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to Petitioners deed (Exhibit 20), Petitioners purchased the property in May of 2003. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioners are the owners of the property. Exhibit 20.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 16,898 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone. Exhibit 13, p. 9. The following table from the Technical Staff report summarizes the relevant development standards for the application. Exhibit 13, p. 10.

Development Standards for the R-60 Zone

Development Standards	Min/Max Required	Proposed	Applicable Zoning Ordinance Provisions
Lot Area	6,000 sq ft	16,898 sq ft	§59-C-1.322 (a)
Lot width at street line	25 ft	89 ft	§59-C-1322 (b)
Minimum lot width at front bldg line	60 ft	89 ft	§59-C-1322 (b)
Setbacks			
- front	25 ft	51/62 ft	§59-C-1.323
- side	8/18 ft	11/27 ft	§59-C-1.323
- rear	20 ft	NA	§59-C-1.323
Maximum Building Height	35 ft	21 ± ft	§59-C-1.327
Maximum Building coverage	35%	11 %	§59-C-1.328
Maximum Floor area for accessory apartment	1,200 sq ft	627 sq ft	§59-G-2.00 (a) (9)

* The subject site has two front yards; no rear yard.

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As previously stated in this report, there are four other approved and existing accessory apartments. Since the Board has previously approved up to five accessory apartments in this neighborhood (including one at the subject site), the Hearing Examiner agrees with Technical Staff's conclusion that the proposed special exception will not create an excessive concentration of similar uses. Exhibit 13, p. 19.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces. Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: As discussed in Part II.B. of this report, there are at least four (Technical Staff's estimate) and possibly up to six (Petitioners' estimate) off-street spaces on Petitioners' gravel parking area. The Housing Code Inspector gauges that there are at least five spaces there. Exhibit 14, Item 6. In any event, there is ample off-street parking. The Hearing Examiner so finds.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 14) specifies certain conditions. Petitioners have agreed to meet all conditions, and will comply with directives of the Housing Code Inspector. Tr. 5-7.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Susan Ogden and Hank Prensky, BOA No. S-2813, which seeks a special exception for an accessory apartment to be located at 7921 Sligo Creek Parkway, Takoma Park, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Ivan Eloisa, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 14):
 - a. The existing dwelling is located on a lot consisting of 16,898 square feet of land.
 - b. The AA consists of 511 square feet of habitable space including one sleeping room measuring 108 square feet.
 - c. Based on square footage requirements, the AA may be occupied by up to two people.
 - d. The existing dwelling was constructed in 1952 and contains approximately 1,609 square feet.

- e. The existing dwelling has off street parking consisting of a large area in front of the house which would allow for the parking of more than 5 vehicles on the premise.
 - f. The ceiling height in the bedroom ranges from 6'09"-6'10". All other areas are over the required 7' ceiling height.
 - g. The AA entrance door from the exterior currently has a double cylinder deadbolt lock that must be replaced with a single cylinder lock that operates with a thumb turn from inside and a key from outside the premises.
 - h. The door separating the AA from the main house dwelling must have a lock to divide the units.
 - i. The bathroom door must be repaired or replaced to close and latch as designed.
 - j. The bedroom door must be repaired or replaced to close and latch as designed.
 - k. The bathroom toilet seat needs to be replaced.
3. Petitioners must comply with the determination of the Housing Code Inspectors as to limits on occupancy in the accessory apartment (up to two persons) and must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;
4. Given the waiver of Code Section 26-25(d), granted by DHCA, pursuant to Code Section 26-17, Petitioners must install hardwired, interconnected smoke detectors throughout the house. No smoke detector or alternative system may be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit is first obtained from the Department of Permitting Services. A Maryland certified electrician must perform the smoke detector upgrade;
5. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
6. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
7. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners

shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: April 20, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin L. Grossman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Martin L. Grossman
Hearing Examiner